

1 Q Oh, do you have it, Mr. Sandifer?

2 A Yes.

3 Q I'm sorry. Thank you very much. Mr. Sandifer, does
4 Glendale Exhibit 223 contain the provision to which you were
5 referring earlier in your testimony with, with regard to
6 amendment or waiver of the agreement?

7 A Yes, it's contained in Section 10.6.

8 Q Well, let me ask you in connection with that,
9 Section 10.6, was there a negotiation in connection with that
10 provision that specifically centered on the subject of the
11 low-power construction permits?

12 A I don't recall any such negotiations.

13 Q Do you recall any, any negotiations at all with
14 respect to that provision?

15 A Not as it pertains to the waiver --

16 Q That, that's what I mean, Section 10.6.

17 A No.

18 JUDGE CHACHKIN: Was any waiver ever requested of
19 the lender to make use of funds to construct the low-power,
20 low-power stations?

21 MR. SANDIFER: No, Your Honor, they were not. One
22 was not.

23 BY MR. EMMONS:

24 Q Mr. Sandifer, would you turn to TBF Exhibit 256,
25 please, in Volume III-D of the blue exhibits?

1 A Would you repeat the number, please?

2 Q 256. Okay, do you have that?

3 A Yes, I do.

4 Q Do you recognize this as your declaration submitted
5 or, or signed in June 1993?

6 A Yes, I do.

7 Q And in the third paragraph of your declaration, do
8 you see the, the reference to what is called the
9 "interdivision account" on the attached balance sheet?

10 A The last paragraph on this page?

11 Q Yes, on page 1 of the exhibit.

12 A Yes.

13 Q And does the term "interdivision account," as used
14 there, reflect the amount of funds which Raystay has
15 subsidized the operation of TV-40 for the periods in -- listed
16 on page 2 of the exhibit?

17 A It would include both the amounts that were advanced
18 for both operating and capital expenditures of TV-40, yes.

19 Q So that if we look at the interdivision account line
20 on page 2 of the exhibit, which is the first page of the
21 balance sheet, it's about six lines up from the bottom, five
22 or six, you see that?

23 A Yes.

24 Q Does that reflect then that as of October 31, 1991,
25 the cumulative amount of, of subsidy for TV-40's construction

1 and operation, as subsidized by Raystay, was a total of
2 approximately \$507,000?

3 A Yes.

4 MR. EMMONS: Now, Your Honor, I have just one final
5 matter on this. I would like to read into the record an
6 additional six or eight lines of, of Mr. Sandifer's deposition
7 testimony on the subject of the instructions Mr. Sandifer had
8 from George Gardner concerning review of David Gardner's work.
9 They were not --

10 JUDGE CHACHKIN: Is this for purpose of information
11 or what?

12 MR. EMMONS: It's for purposes of clarification of
13 the witness's testimony and possible impeachment, Your Honor.
14 It's on page 295 of the, of the deposition. Lines 8 through
15 17. Beginning at line 8, "Question: Is that instruction
16 particular to David Gardner? In other words, was it -- in
17 particular, was George Gardner that someone else, i.e. you,
18 should review David Gardner's work before George would sign?"

19 MR. SCHAUBLE: Your Honor, I think I object at this
20 point. I mean, there was testimony earlier, but I, I don't
21 see the purpose of reading this in now when there's, you know,
22 it's been a while since there's, there's been some testimony
23 on this point and it seems to me --

24 JUDGE CHACHKIN: I'll, I'll sustain the objection.
25 If you want to ask the witness a question, you can.

1 MR. EMMONS: Yes, I'll ask the witness a question
2 then.

3 BY MR. EMMONS:

4 Q Mr. Sandifer, with reference to the standing
5 instruction you received from George Gardner to review
6 documents prepared for George Gardner's signature by David
7 Gardner, was that instruction particular to David Gardner?

8 A No.

9 Q Well, would, would you look at your deposition, page
10 295? Do you have that?

11 A Yes.

12 Q And starting on line 13 you gave the following
13 answer to the -- essentially the same question. "It pertains
14 in general to all things that I would transmit to George
15 Gardner for signature, but it particularly pertains to
16 anything prepared by David Gardner that would require George
17 Gardner's review or signature." And my question is is the
18 answer that I've just quoted there from your deposition, was
19 that accurate when you gave it?

20 A May I have a minute just to read a page or two?

21 Q Sure.

22 JUDGE CHACHKIN: Go ahead. We'll go off the record.

23 (Off the record. Back on the record.)

24 JUDGE CHACHKIN: Back on the record.

25 BY MR. EMMONS:

1 Q Do you have the question?

2 A Would you repeat --

3 Q My question was was the answer given by you on pages
4 13 through 17 of page 295 of your deposition accurate?

5 MR. SCHAUBLE: Correction, Your Honor, lines 13
6 through 17.

7 MR. EMMONS: I'm sorry, lines 13 through 17, page
8 295.

9 MR. SANDIFER: Well, from my reading of these two
10 pages, when you read the previous -- From, from line 15 on
11 page 294 to the point of the question that you have on page
12 295, 13 through 17, I do not think that either my testimony or
13 my deposition are in conflict here.

14 BY MR. EMMONS:

15 Q All right. Let me ask just -- ask the question this
16 way, Mr. Sandifer. Was -- Did George Gardner express to you a
17 particular concern with the accuracy or quality of David
18 Gardner's work?

19 JUDGE CHACHKIN: Is that true?

20 MR. SANDIFER: I would say that the standing
21 instruction had to do with just concerns in the sense that
22 David Gardner was the reviewer and preparer of a number of
23 contract documents, and primarily, that area would be
24 influenced by David Gardner's performance and I was to review
25 that prior to George Gardner signing documents.

1 BY MR. EMMONS:

2 Q But it wasn't just contracts, was it? I mean, you
3 also referred in your deposition to FCC applications, didn't
4 you?

5 A Excuse me. I used the word "contracts" to pertain
6 to a whole body of documents which David Gardner was involved
7 with, including FCC documents.

8 Q All right.

9 MR. EMMONS: That's all I have, Your Honor.

10 JUDGE CHACHKIN: Mr. Shook.

11 MR. SCHAUBLE: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. SHOOK:

14 Q Mr. Sandifer, you mentioned in your testimony that
15 there came a point in time when David Gardner began to report
16 to you. Did his reporting to you mean that you also had some
17 supervision over him?

18 A Yes.

19 Q Did your supervision change at any time from the
20 time Mr. Gardner, David Gardner, was required to report to you
21 to the present?

22 A Other than our relationship on working on certain
23 projects, no. It's been consistent throughout the period.

24 Q Would your supervision of David Gardner involve
25 keeping track of his attendance at work and his absences from

1 work?

2 MR. SCHAUBLE: Objection. Relevance, Your Honor.

3 JUDGE CHACHKIN: Well, we'll see where it goes --
4 question, I'll overrule the objection.

5 MR. SANDIFER: Generally, that is part of my
6 responsibilities. He -- I approve his vacation request, I
7 approve his absences for sickness, and we discuss -- at times
8 we discuss his schedule.

9 BY MR. SHOOK:

10 Q David Gardner has a normal day-to-day, Monday-
11 through-Friday schedule?

12 A In general, yes.

13 Q Now, if Mr. David Gardner is going to be out of the
14 office for any extended period during the course of the day,
15 is he supposed to advise you as to how long he's going to be
16 out?

17 A Generally, if it's during the course of a day,
18 unless I know of some scheduled meeting or some project we're
19 working on, we may correspond to that level of detail.

20 Q In other words, if David Gardner were going to be
21 out of the office for, say, four to six, perhaps even the
22 entire day, he wouldn't necessarily have to tell you about it
23 and you wouldn't know about it?

24 A Not necessarily. But in cases where I believe Mr.
25 Gardner is going to be gone all day or for extended periods,

1 he commonly notifies me.

2 Q Is it the case that when Mr. David Gardner leaves
3 the office during the day on a business matter would he be
4 using his personal car or a company car?

5 A It would depend upon what time we're talking about.

6 Q Well, let me focus on the period of the fall of
7 1991. Now, during this period of time, if Mr. David Gardner
8 were to be leaving the office to conduct matters related to
9 Raystay's business and he were going to be out of the office
10 for anywhere from four to eight hours traveling with respect
11 to such matters, would he be using a company car or would he
12 be using his personal car?

13 A He could be using either.

14 Q If he were using -- No matter which car he was
15 using, would it be necessary for him to let you know that he
16 was going to be using that vehicle, or is it the case that
17 only if he were using the company car would he have to let you
18 know?

19 A Only if he was requesting the use of the company car
20 and it required my intervention then would I know about it.

21 Q In other words, there might be situations where your
22 intervention was not required?

23 A Yes.

24 Q And as a general matter, what delineation would
25 there be between your involvement and not -- your being not

1 involved?

2 A We have a limited number of company pool cars, and
3 that number may range from three to six vehicles. Depending
4 on who else in the corporate office is traveling, those
5 vehicles may be allocated. And sometimes he appeals to me to
6 intervene to say he gets the higher priority or something --
7 he's doing, or we discuss that he has pressing company
8 business -- be an extensive driving process and he requests my
9 intervention.

10 Q Has he ever notified you that he wanted to use the
11 company car to visit the Lebanon and Lancaster low-power
12 television permit sites? Do you know what I'm talking about
13 when I, when I say that? Can you tell us when he --

14 REPORTER: Did you say yes or no?

15 MR. SANDIFER: I said yes.

16 BY MR. SHOOK:

17 Q Can you tell us when and how many times he made such
18 requests?

19 A I only recall one such occasion, and it happened in
20 the fall of, of 1991.

21 Q And what were -- To your best recollection, what
22 were the circumstances surrounding that request in --

23 A The circumstances were such that he was meeting with
24 a Trinity-related engineer and he had requested either
25 reimbursement or mileage on his personal vehicle or use of a

1 company vehicle to accompany that engineer to the appropriate
2 sites.

3 Q Your recollection now is such that you can't
4 distinguish between whether he was asking for reimbursement as
5 a result of the trip already having been taken or that he was
6 about to go on the trip and he essentially was seeking
7 permission to do so?

8 A Well, I recollect that he asked me in advance, but I
9 don't recollect whether we reimbursed him for expenses or
10 whether he used the company vehicle.

11 Q And your understanding of David's trip was that he
12 was going to accompany an individual to look at Lebanon and
13 Lancaster sites?

14 A That was my understanding at the time that he made
15 the request.

16 Q The request was made to you orally?

17 A Yes.

18 Q Did David Gardner ever report back to you about the
19 results of any such inspection that he made?

20 A He reported that he met with a Trinity engineer and
21 -- at the time of that occurrence. And I, I guess that's the
22 extent of my recollection.

23 Q Do you recall David Gardner saying anything to you
24 about what he and the Trinity engineer found relative to their
25 visits or looking at the sites at Lebanon and Lancaster?

1 A No, I don't have any such recollection.

2 Q Did you ever ask him?

3 A Not at the time that we're talking about the
4 occurrence happening. We have had subsequent conversations in
5 preparing for depositions and testimony.

6 Q But you did not ask him about any such visits
7 between the fall of 1991 and the summer of 1992 when the
8 second set of extension applications were filed?

9 A No.

10 Q Do you know whether David Gardner reported about his
11 visits to the Lancaster and Lebanon sites to anyone other than
12 yourself?

13 A No.

14 Q I'd like you to turn to TBF Exhibit 210, which is in
15 Volume III-C.

16 A Yes, sir.

17 Q Now, if, if I remember your testimony correctly, you
18 did see this document, this two-page draft document relatively
19 contemporaneously with the date of its preparation. That is,
20 somewhere in the vicinity of February 1991?

21 A As I recall, I testified that I remember upon
22 reflection seeing it in the first half of 1991, but I don't
23 recall when.

24 Q All right. So sometime approximately in the first
25 six months of 1991? I'd like to focus your attention on page

1 2.

2 A All right.

3 Q Specifically, the time table portions that appear at
4 the bottom of the page. Now, I'm going to go through these
5 things and ask you if there ever came a time between February
6 1991 and March of 1993, whether the things in question
7 happened. So with that time reference in mind, it's a two-
8 year span we're talking about now, can you tell us whether at
9 any time during that two-year span that anyone on behalf of
10 Raystay contacted cable operators and obtained their
11 commitment to carry the stations when they are active?

12 A I'm aware of numerous contacts that were made with
13 cable operators by Hal Etsell, David Gardner. And I made some
14 contacts, but they were primarily in regard to TV-40. But we
15 did not obtain any written commitments to carry the stations
16 from these operators. There was a level of interest expressed
17 by these operators.

18 Q Are you suggesting then that you obtained all
19 commitments from some of the cable operators?

20 A We, we obtained oral representations. Whether they
21 were commitments or not, I don't know.

22 Q Were the, were the substance or nature of those
23 representations that you received from cable operators, did
24 they at any time lead you to believe that the cable operator
25 in question would put on to its system or place into its

1 system any of the low-power permits that are the subject of
2 this memo?

3 A Could you restate the question?

4 Q Okay. Did the cable operators, were their
5 representations of such a nature that you had any belief that
6 the cable operators would put onto their systems any of the
7 low-power stations that are the subject of this memo?

8 A I had representations from Hal Etsell and David
9 Gardner that they had received some positive response from
10 their preliminary discussions with cable operators in the
11 area, Primet, Enlarger, Telmed, cable operators in the areas
12 that are served by the low-power construction permits.

13 Q Were any of those cable operators identified to you?

14 A Yes.

15 Q Can you tell us which cable operators you're
16 referring to?

17 A Hal Etsell made representations that he talked to
18 Lenfest Group, Time-Warner's cable operation in Reading, John
19 Scott in particular, and the Sammons Communication Group in
20 Harrisburg, and possibly, although I don't remember whether it
21 was he or David Gardner that said they talked to Susquehanna
22 Cable, which is in the York area. David Gardner represented
23 that he had talked to several of these operators, particularly
24 Susquehanna.

25 I personally have talked to Sammons in regard to

1 TV-40, Flight Systems and GS Cable in Dillsburg that had to do
2 with TV-40, but that was the extent of my discussions with
3 cable operators.

4 Q The focus of my question concerns the low-power
5 permits. To the extent that TV-40 is involved, if you could
6 distinguish for me, now, when Hal Etsell was talking to
7 Lenfest was he talking about TV-40, the low-power permits that
8 had not yet been built, or both?

9 A In the cases of David Gardner and Hal Etsell, I
10 believe they were talking about the low-power construction
11 permits. I believe my -- David Gardner may have also talked
12 about TV-40, but I believe that Hal Etsell's emphasis was on
13 the low-power construction permits.

14 Q Can you give me some rough time range as to when Hal
15 Etsell told you that he spoke with Lenfest and received an
16 indication that Lenfest would place into its system one of the
17 low-power stations?

18 A Well, the first, I guess I would say sometime in the
19 period from February through May of 1991 was the initial
20 contract.

21 JUDGE CHACHKIN: Isn't it true -- Oh, go ahead. I'm
22 sorry.

23 MR. SANDIFER: And then I had representations from
24 David Gardner and, and Hal Etsell that they also had
25 discussions with cable operators at the Atlantic City Cable

1 Show in October of 1991.

2 JUDGE CHACHKIN: Isn't it true that all of these, as
3 you say, commitments had a caveat, if the programming was
4 acceptable? Are you saying these cable systems would put on
5 these low-power stations without seeing what the programming
6 consisted of?

7 MR. SANDIFER: No, Your Honor. I, I'm referring --
8 These are -- Our discussions were based upon delivery of
9 acceptable programming in the market area.

10 BY MR. SHOOK:

11 Q In other words, you had to get the low-power
12 stations up and running, to have programming, and then have
13 that programming be acceptable to the cable operator before
14 the cable operator would even think about putting the low-
15 power station into its system?

16 A I would agree with -- that those are the components,
17 but I wouldn't put them in that order. Our intent was to get
18 acknowledgement from the cable operator that they were
19 interested, and that was going to be a basis for developing
20 the construction permits that would then be on their cable
21 system.

22 Q I'm a little confused. Can you help me out as to
23 what -- to, you know, when I, when I put the question the way
24 I did, there's something wrong with the timing that I have?

25 A Well, I -- you just mentioned we build it and then

1 they see the programming and then they put it on. And my
2 point is we wouldn't build it until we had the programming so
3 that they would know what they're getting, so that when we
4 built it they would, you know, they would come.

5 Q All right. So you get the programming first, then
6 you build it. And in the course of building it, because
7 you've got certain programming, you realize or you've got
8 commitments that the cable companies are going to put your
9 station into their system. That's, that's the way it was
10 supposed to work?

11 A That was the, the concept.

12 Q The concept.

13 JUDGE CHACHKIN: But you wouldn't build them till
14 you had satisfactory commitments from the cable systems that
15 they were satisfied with your programming and they were going
16 to put it on?

17 MR. SANDIFER: That's my opinion of the, of the
18 process.

19 BY MR. SHOOK:

20 Q All right. So, apparently, the first thing then was
21 to secure programming which the cable operators would find
22 successful, or, I mean, acceptable I should say, correct?

23 A That's certainly one of the early, early activities.

24 Q Well, now, if it's, if it's necessary to have
25 acceptable programming at the outset, beginning in February

1 1991 who at Raystay was responsible for obtaining such
2 acceptable programming?

3 A Hal Etsell.

4 Q And how long did Hal Etsell remain responsible for
5 that activity?

6 A In various capacities, I would say till March of
7 1993.

8 Q How is it that you understand that Hal Etsell was
9 responsible for obtaining the programming? What is the basis
10 of your understanding?

11 A I guess it has to do with my knowledge of the
12 workings of the personnel, the organizational structure of the
13 company.

14 Q You mean your understanding basically is that --
15 Would it be fair to state that your understanding basically is
16 that George Gardner charged Hal Etsell with finding acceptable
17 programming and that that charge was essentially in place from
18 February 1991 to March of 1993 relative to the unbilled low-
19 power permits?

20 A If I was going to characterize anybody within our
21 organization having that responsibility, it would be Hal
22 Etsell during that period.

23 Q Would there be anybody else who had that
24 responsibility?

25 A Well, I think many of us had investigations,

1 inquiries, had done research of the various programming
2 options, but I think some of the network concept, I guess, was
3 more unique to Mr. Etsell's development.

4 Q Were you ever aware of any reports made by
5 Mr. Etsell, assuming that such reports were made, that
6 indicated that he had found programming that he thought would
7 be acceptable or might be acceptable to cable operators?

8 A Mr. Etsell made representations that he had had
9 discussions with various members of -- to obtain programming
10 that would be suitable.

11 Q That Raystay was going to obtain programming from
12 the cable company?

13 A Raystay -- Lenfest is a multipurpose company. Their
14 area that has to do with program development and contracts,
15 Mr. Etsell has some contacts there, I believe the fellow's
16 name is George Stremel, and he talked about they were going to
17 acquire libraries, to access the libraries to old movies and
18 those kind of things -- regional nostalgia-type, Americana-
19 type programming that would be supported by local advertising.

20 Q Approximately when was, you know, such a -- such
21 information brought to your attention that Mr. Etsell had had
22 this discussion or conversation with Lenfest concerning the
23 obtaining of nostalgia programming?

24 A It was generally discussed with me in the first half
25 of 1991. We had a -- Mr. Etsell and I had a specific

1 discussion about it in the fall of 1991, after I took over
2 supervisory -- TV-40 operations, because he referred me to Mr.
3 Stremel for development of another concept which Mr. Stremel
4 has now implemented --

5 Q What if anything -- Well, let me ask a different
6 question. Other than the two contacts or two reports that you
7 related, one being in the spring-winter of 1991 and the other
8 being in the fall of 1991, did Mr. Etsell report to you at any
9 other time about contacts and -- for obtaining programming and
10 the results of those contacts?

11 A Yes.

12 Q When did, when did that report or reports take
13 place?

14 A Well, David Gardner, Hal Etsell and I had
15 conversations, both individually and collectively, about a
16 number of alternate programming ideas, ranged from video
17 jukebox to home shopping to other things that could be put on
18 the low-power station in Carlisle -- I mean in Dillsburg, TV-
19 40, as well as they could have applications for the low-power
20 construction permits. Now, there is a whole variety of those
21 that appeared over a long period of time during 1991 and 1992.

22 Q Well, I think it, it may be apparent to some in here
23 that what I'm driving at is that with respect to program
24 discussions, did it ever reach the stage where you thought
25 there was programming that was acceptable enough to warrant

1 the investment of funds into the construction of the low-power
2 television stations that are the subject of this memo?

3 A There did not come a point in time during this
4 period where I think we sufficiently developed such
5 programming.

6 Q So, in other words, with respect to programming
7 there were ideas kicked about, there were preliminary
8 discussions, but it never reached a point where you, as chief
9 financial officer, thought that you had a, a programming
10 package or possibility of a programming package that would
11 warrant expenditure of funds to build the stations?

12 A That's correct. We had a lot of contacts, a lot of
13 discussions, a lot of, of brainstorming, but no tangible
14 results that ended up in the, in the completion of the
15 process.

16 JUDGE CHACHKIN: Are you moving on to something else
17 now?

18 MR. SHOOK: Yes.

19 JUDGE CHACHKIN: All right. We'll be in recess till
20 9:30 tomorrow morning.

21 (Whereupon, at 4:00 p.m., the hearing was adjourned
22 until 9:30 a.m. on January 26, 1994.)
23
24
25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.

Name AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Docket No.

WASHINGTON, D.C.

Place

JANUARY 25, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 4959 through 5127, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

January 31, 1994

Date

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Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947